

NATURAL RESOURCES CODE
CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. POLICY. (a) The surface estate in the coastal public land of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas, and it is the declared policy of this state that the estate be managed pursuant to the policies stated in the following subsections of this section.

(b) The natural resources of the surface estate in coastal public land shall be preserved. These resources include the natural aesthetic values of those areas and the value of the areas in their natural state for the protection and nurture of all types of marine life and wildlife.

(c) Uses which the public at large may enjoy and in which the public at large may participate shall take priority over those uses which are limited to fewer individuals.

(d) The public interest in navigation in the intracoastal water shall be protected.

(e) Unauthorized use of coastal public land shall be prevented.

(f) Utilization and development of the surface estate in the coastal public land shall not be allowed unless the public interest as expressed by this chapter is not significantly impaired by it.

(g) For the purposes of this chapter, the surface estate in coastal public land shall not be alienated except by the granting of leaseholds and lesser interests and by exchanges of coastal public land for littoral property as provided in this chapter.

(h) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of these rights, and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired.

Acts 1977, 65th Leg., p. 2382, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.002. PURPOSE. The purpose of this chapter is to implement the policies stated in Section 33.001 of this code by delegating to the board, assisted by the planning division and other staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.003. SHORT TITLE. This chapter may be cited as the Coastal Public Lands Management Act of 1973.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.004. DEFINITIONS. In this chapter:

(1) "Land office" means the General Land Office.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Board" means the School Land Board.

(4) "Person" means any individual, firm, partnership, association, corporation which is public or private and profit or nonprofit, trust, or political subdivision or agency of the state.

(5) "Coastal area" means the geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

(6) "Coastal public land" means all or any portion of state-owned submerged land, the water overlying that land, and all state-owned islands or portions of islands in the coastal area.

(7) "Island" means any body of land surrounded by the water of a saltwater lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(8) "Management program" means the coastal management program provided by this chapter.

(9) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(10) "Structure" means any structure, work, or improvement constructed on, affixed to, or worked on coastal public land, including fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills,

excavations, land canals, channels, and roads.

(11) "Submerged land" means any land extending from the boundary between the land of the state and the littoral owners seaward to the low-water mark on any saltwater lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath the body of water, but for the purposes of this chapter only, shall exclude beaches bordering on and the water of the open Gulf of Mexico and the land lying beneath this water.

(12) "Littoral owner," in this chapter only, means the owner of any public or private upland bordered by or contiguous to coastal public land.

(13) "Council" means the Coastal Coordination Council.

(14) "Coastal zone" means the portion of the coastal area located within the boundaries established by the coastal management program under Section 33.053(a)(1).

(15) "Network" means the Texas Coastal Ocean Observation Network.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 1, eff. June 8, 1995; Acts 2005, 79th Leg., ch. 719, Sec. 1, eff. June 17, 2005.

Sec. 33.005. EFFECT OF CHAPTER. (a) This subchapter does not repeal Subchapter B, Chapter 436, Health and Safety Code, or the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76, Subchapter B of Chapter 81, Subchapter G of Chapter 82, Subchapter C of Chapter 216, or Sections 66.101, 66.107, 66.112 through 66.118, 66.205, 76.031 through 76.036, 78.001 through 78.003, 81.002, 136.047, 184.024, 201.015, or 335.025.

(b) None of the provisions of this chapter may be construed to alter, amend, or revoke any existing right granted pursuant to any law.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(100), eff. Sept. 1, 1991.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 33.011. BOARD TO ADMINISTER, IMPLEMENT, AND ENFORCE CHAPTER. The board is the executive agency of the state charged with the administration, implementation, and enforcement of this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.012. LAND OFFICE TO ASSIST BOARD. The planning division and other staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.013. ADDITIONAL PERSONNEL. The commissioner may employ any additional personnel in the land office that may be necessary for the board to perform effectively its functions under this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.014. DISPOSITION OF MONEY FOR GRANTS OF CERTAIN INTERESTS. Money received by the board for grants of surface interests under this chapter whose initial term equals or exceeds 20 years shall be deposited in the State Treasury to the credit of the permanent school fund.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.015. SPECIAL ACCOUNT. (a) A dedicated account is created, and money received by the board for the grant of permits under this chapter shall be deposited in the State Treasury to the credit of this dedicated account.

(b) Sections 403.094(h) and 403.095(b), Government Code, do not apply to the dedicated account created under this section.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 9, eff. Sept. 1, 1993.

Sec. 33.016. DISPOSITION OF OTHER FUNDS. Money received by the board for the grant of any interest not under Section 33.015 of this code shall be deposited in the State Treasury to the credit of the permanent school fund.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 33.051. GENERAL DUTY. The board, the council, the land office, and the network shall perform the duties provided in this subchapter.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 33, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995; Acts 2005, 79th Leg., ch. 719, Sec. 2, eff. June 17, 2005.

Sec. 33.052. DEVELOPMENT OF COASTAL MANAGEMENT PROGRAM. (a) The commissioner shall develop a continuing comprehensive coastal management program pursuant to the policies stated in Section 33.202 of this code. The program is not effective until approved by a majority of the council under Section 33.204 of this code.

Text of subsec. (b) as amended by Acts 1995, 74th Leg., ch. 165,
Sec. 22(52)

(b) In developing the program, the land office shall act as the lead agency to coordinate and develop a long-term plan for the management of uses affecting coastal conservation areas, in cooperation with other state agencies that have duties relating to coastal matters, including the Parks and Wildlife Department, the attorney general's office, the Texas Natural Resource Conservation Commission, the Texas Water Development Board, the Texas Department of Transportation, and the Railroad Commission of Texas. The plan shall implement the policies stated in Section 33.001 of this code and shall include the elements listed in Section 33.053 of this code.

Text of subsec. (b) as amended by Acts 1995, 74th Leg., ch. 416,
Sec. 2

(b) In developing the program, the land office shall act as the lead agency to coordinate and develop a long-term plan for the management of uses affecting coastal natural resource areas, in cooperation with other state agencies that have duties relating to coastal matters, including those agencies represented on the council. The program shall implement the policies stated in Section 33.202 of this code and shall include the elements listed in Section 33.053 of this code.

(c) The council may appoint and establish procedures for an advisory committee to advise the council and the land office on coastal management issues. The advisory committee may only include persons with expertise in coastal matters. A member of the advisory committee serves at the pleasure of the council. A member is not entitled to compensation for services performed as a member of the committee but may receive reimbursement from land office funds for actual and necessary expenses incurred in attending meetings of the advisory committee.

(d) For purposes of Subsections (a) and (b) of this section, "coastal natural resource areas" has the meaning assigned by Section 33.203 of this code.

(e) This section does not add to or subtract from the duties and responsibilities of a state agency other than the land office, the council, and the board.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 1145, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 295, Sec. 34, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.263, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(52), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 1, eff. Sept. 1, 2001.

Sec. 33.053. ELEMENTS OF COASTAL MANAGEMENT PROGRAM. (a) The coastal management program, in compliance with the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), shall include the following elements:

(1) an identification of the boundaries of the coastal zone subject to the coastal management program as provided by Section 33.2053(k);

(2) a continuous analysis of the potential uses for the land and water within the coastal zone, including recommendations as to which configurations of uses consonant with the policies of this chapter maximize the benefits conferred on the present and future citizens of Texas;

(3) guidelines on the priority of uses within the coastal zone, including specifically those uses of lowest priority;

(4) a list of the uses of the land and water within the

coastal zone that are permissible under state law and under agency or subdivision actions described by Sections 33.2051 and 33.2053 and that would have a direct and significant impact on the coastal waters;

(5) recommendations as to increments of jurisdiction or authority necessary to protect land and water within the coastal zone from direct and significant detrimental consequences flowing from the uses of adjacent land;

(6) an inventory of designated coastal natural resource areas, as defined by Section 33.203, in the coastal zone;

(7) a description of the organizational structure by which the coastal management program is implemented and administered;

(8) a compilation of state constitutional provisions, laws, rules, and judicial decisions under which the state proposes to exercise control over the uses of land and water described by Subdivision (4);

(9) a list of each agency or subdivision action, as described by Sections 33.2051 and 33.2053, that may have a direct and significant detrimental impact on coastal natural resource areas;

(10) a list of each federal agency action or activity and each outer continental shelf plan that may have a direct and significant detrimental impact on coastal natural resource areas;

(11) a procedure, as described under Sections 33.205, 33.2051, 33.2052, 33.2053, 33.206, 33.208, and 33.209, for determining the consistency of an agency or subdivision action or a federal agency action or activity or outer continental shelf plan with the goals and policies of the coastal management program;

(12) a definition of "gulf beach," as defined by Section 33.203, and a description of the statutory planning process or program for protection of and access to public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value;

(13) a description of the statutory planning process or program for energy facilities likely to be located in, or that may directly and significantly affect, the coastal zone;

(14) a description of the statutory planning process or program for:

(A) assessing the effects of shoreline erosion;

(B) studying and evaluating ways to control or reduce the impact of shoreline erosion; and

(C) restoring areas detrimentally affected by shoreline erosion;

(15) a description of the state's statutory program regulating nonpoint source water pollution, as it relates to the coastal zone; and

(16) an explanation of the relationship of specific policies of the coastal management program to:

(A) protection of resources;

(B) management of coastal development; and

(C) simplification of governmental procedures.

(b) For purposes of Subsections (a)(9) and (a)(11), "agency or subdivision action" has the meaning assigned by Section 33.203.

(c) For purposes of Subsections (a)(10) and (a)(11), "federal agency action," "federal agency activity," and "outer continental shelf plan" have the meanings assigned by Section 33.203.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995.

Sec. 33.054. REVIEW AND AMENDMENT OF MANAGEMENT PROGRAM. The commissioner may review the management program periodically and may amend the management program as new information or changed conditions may warrant.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 35, eff. June 7, 1991.

Sec. 33.055. PUBLIC HEARINGS TO CONSIDER COASTAL MANAGEMENT PROGRAM. In developing, reviewing, or amending the coastal management program, after due notice to affected persons and the public generally, the commissioner and the council shall hold or have held public hearings as the commissioner and the council determine to be appropriate.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 36, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995.

Sec. 33.056. STRUCTURES ON LAND ADJACENT TO COASTAL PUBLIC LAND. (a) On receipt of appropriate applications, the board shall register existing structures extending on coastal public land from adjacent land not owned by the state.

(b) Insofar as consonant with the policies of this chapter, the board may regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which are built so that they extend on coastal public land from adjacent land not owned by the state.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.057. GIFTS OF INTERESTS IN LAND. (a) The board may accept gifts of interests in land, and these interests shall become part of the permanent school fund unless otherwise designated by the grantor.

(b) At the discretion of the board, the land may be managed as if it were coastal public land within the meaning of this chapter.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.058. PURCHASE OF FEE AND LESSER INTERESTS IN LAND. (a) The board may select and purchase fee and lesser interests in land of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities.

(b) The interests may be purchased by the board with money acquired by gift or grant, but the interests may not be obtained by condemnation.

(c) Interests acquired under this section shall not become a part of the permanent free school fund unless they are so designated by the board.

(d) In the discretion of the board, the interests may be managed as if they were coastal public land within the meaning of this chapter regardless of whether they fall within the meaning of coastal public land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.059. STUDIES. The board may study various coastal engineering problems, including the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements on the physical and biological systems of the coastal public land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.060. LOCATING AND MARKING BOUNDARIES. The board may locate and have marked on the ground the boundaries separating coastal public land from other land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.061. COMPLAINTS. (a) The board shall receive and evaluate any complaint or report from any person concerning instances of unauthorized construction, maintenance, use, or assertion of control of any structure on coastal public land.

(b) The board shall refer to the attorney general all cases warranting judicial remedies, and the attorney general shall immediately initiate judicial proceedings for the appropriate relief.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.062. DESIGNATED OFFICIAL REPRESENTATIVE. The board is designated and shall serve as the official representative of the governor of the state to conduct with the federal government any business concerning any matter affecting the coastal public land which arises out of the exercise by the federal government of any authority it may have over navigable water under the Constitution of the United States.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.063. FEES. The board may prescribe reasonable filing fees and fees for granting leases, easements, and permits.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 33.064. RULES. The board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce this chapter.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.065. TEXAS COASTAL OCEAN OBSERVATION NETWORK. (a) The Texas Coastal Ocean Observation Network is a cooperative project of Texas A&M University--Corpus Christi, Lamar University, the Texas Water Development Board, and the land office.

(b) The network shall collect data on natural processes affecting the coast for the purpose of studying, planning for, and managing human uses of the coast as they are affected by those natural processes.

(c) The participating state entities shall coordinate the project with the United States Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and other appropriate entities, including private entities.

(d) The participating state entities may contract and enter into agreements with the United States Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and other appropriate entities, including private entities, as necessary to carry out their duties under this section.

Added by Acts 2005, 79th Leg., ch. 719, Sec. 3, eff. June 17, 2005.

SUBCHAPTER D. RIGHTS IN COASTAL PUBLIC LAND

Sec. 33.101. APPLICATION TO ACQUIRE RIGHTS IN COASTAL PUBLIC LAND. Any person who desires to acquire rights in the surface estate in any coastal public land shall make application to the board in writing in the form prescribed by the board.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.102. CONTENTS OF APPLICATION. The application to acquire rights in coastal public land shall include:

(1) an adequate legal description of the land in which the rights are sought;

(2) a statement of the rights sought;

(3) a statement of the purpose or purposes for which the land is to be used;

(4) a description of the nature and extent of the improvements, if any, which will be made on the land;

(5) an estimate of the time within which any improvements to be made will be completed; and

(6) any additional information the board considers necessary, including, in the case of any application for approval of construction, modification, repair, or removal of a structure, a description of all plans for any filling, dumping, dredging, or excavating to be done.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.103. INTERESTS WHICH MAY BE GRANTED BY THE BOARD. (a) The board may grant the following interests in coastal public land for the indicated purposes:

(1) leases for public purposes;

(2) easements for purposes connected with:

(A) ownership of littoral property; or

(B) the operation of a facility operated by an existing channel and dock corporation that was issued articles of incorporation under Chapters 13 and 14, Title 32, Revised Statutes;

(3) permits authorizing limited continued use of previously unauthorized structures on coastal public land not connected with ownership of littoral property; and

(4) channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or appropriate to the use of the interests.

(b) The board may not grant any interest in land within 2,500 feet of a military base unless the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the grant will not adversely affect the mission of the military base.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 1, eff. Aug. 26, 1985; Acts 2003, 78th Leg., ch. 149, Sec. 12, eff. May 27, 2003.

Sec. 33.104. PROCESSING APPLICATION. (a) On receiving an application, the board may circulate it for review and comment to the member agencies of the Interagency Natural Resources Council or

its successor.

(b) The board shall determine whether the proposed application should be granted not less than 30 days nor more than 90 days after the application is received.

(c) If the application is granted, the board shall determine the reasonable term, conditions, and consideration for the grant and may consummate the transaction.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.105. PERSONS TO WHOM LAND MAY BE LEASED. The board may lease coastal public land to:

(1) the Parks and Wildlife Department or to any eligible city or county for public recreational purposes;

(2) the Parks and Wildlife Department for management of estuarine preserves;

(3) any nonprofit, tax-exempt environmental organization approved by the board for the purpose of managing a wildlife refuge; and

(4) any scientific or educational organization or institution for conducting scientific research.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.106. POLICIES, PROVISIONS, AND CONDITIONS OF LEASES. In addition to policies generally applicable under this chapter, leases granted under this subchapter shall be subject to the policies, provisions, and conditions stated in Sections 33.107 through 33.110 of this code.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.107. PROTECTION OF RIGHTS. The littoral rights of the adjacent upland owner shall be protected in a lease.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.108. RIGHTS OF THE PUBLIC. Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.109. COUNTIES AND CITIES ELIGIBLE TO LEASE COASTAL PUBLIC LAND. (a) A county is eligible to apply for a lease of coastal public land inside the county and outside the boundaries of any incorporated city, town, or village for public recreational purposes.

(b) An incorporated city, town, or village is eligible to lease coastal public land within its corporate boundaries for public recreational purposes.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.110. CONTRACTS AND FRANCHISES. (a) With the approval of the board, a lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation.

(b) No contract or franchise agreement may authorize any commercial activity within 300 feet of privately owned littoral property without the written consent of the littoral owner of the property.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.111. GRANTING EASEMENTS. (a) The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public land for purposes connected with the ownership of littoral property.

(b) The board may grant easement rights to construct channels, wharves, docks, and marinas to an existing corporation that was issued articles of incorporation under Chapters 13 and 14, Title 32, Revised Statutes.

(c) Notwithstanding any provision in its charter or articles of incorporation to the contrary, a corporation described in Subsection (b) of this section may only obtain the use of or acquire property from the state as provided by that subsection.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 2, eff. Aug. 26, 1985.

Sec. 33.112. FAILURE TO OBTAIN AN EASEMENT. (a) Any owner of

littoral property or any person acting under the owner of littoral property who for purposes connected with the ownership of the littoral property shall construct or fix or place on coastal public land any structure without first obtaining an easement from the land office is subject to a civil penalty of not more than \$200.

(b) Each day the structure remains on or is affixed to coastal public land constitutes a separate offense.
Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.113. INTERPRETATION OF EASEMENT GRANT. The grant of an easement under Section 33.111 of this code and the waiver under Section 33.115 of this code shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.114. POLICIES, PROVISIONS, AND CONDITIONS OF EASEMENTS. In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of an easement is subject to the policies, provisions, and conditions of Sections 33.115 and 33.117 of this code.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.115. PIERS. (a) Without obtaining an easement from the board, the owner of littoral property may construct a pier on adjacent coastal public land if the pier:

(1) is not used for commercial purposes;
(2) is 115 feet or less in length and 25 feet or less in width; and

(3) requires no filling or dredging.

(b) In addition to the provisions of Subsection (a), the board may adopt rules with limitations and requirements that are consistent with the policies stated in Section 33.001 of this code that allow an owner of littoral property to construct a pier with associated appurtenances on adjacent coastal public land without first obtaining an easement from the board.

(c) The location and dimensions of the pier and description of any associated appurtenances must be registered with the board in the manner provided in this chapter.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 366, Sec. 1, eff. May 26, 2001; Acts 2005, 79th Leg., ch. 58, Sec. 1, eff. May 17, 2005.

Sec. 33.116. FAILURE TO REGISTER PIER. Any owner of littoral property who fails to register the location and dimensions of the pier which is authorized to be constructed under Section 33.115 of this code is subject to a civil penalty of not more than \$200.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.117. PUBLIC POLICY OF STATE TO BE CONSIDERED. In administering Sections 33.111 through 33.115 of this code, the board shall consider the public policy of the state that the orderly use of privately owned littoral property in a manner consistent with the public policy of the state will not be impaired.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.118. SINGLE PERMIT. If the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of state government, the board may agree with the agency or department to issue a single document incorporating all rights and privileges of the applicant.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.119. ISSUANCE OF PERMITS. The board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming an interest in the structure but is not incident to the ownership of littoral property.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.120. FAILURE TO OBTAIN A PERMIT. A person who maintains, uses, or repairs any structure for which a permit is required under Section 33.119 of this code without first obtaining a permit from the board is subject to a civil penalty of not less than \$50 nor more than \$1,000.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.121. UNAUTHORIZED STRUCTURES. Any person who constructs, fixes, or places on coastal public land any unauthorized structure for purposes not connected with ownership of littoral property is subject to a civil penalty of not less than \$50 nor more than \$1,000.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.122. EXCEPTION TO PERMIT REQUIREMENT. No permit may be required for structures, excavations, or other similar structures as long as they are located wholly on the private littoral upland, even though the activities may result in the area being inundated by public water.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.123. POLICIES, PROVISIONS, AND CONDITIONS OF PERMITS. In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of a permit is subject to the policies, provisions, and conditions of Sections 33.120 through 33.122 and 33.124 through 33.126 of this code.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.124. PERMITS PROHIBITED FOR CERTAIN STRUCTURES. The board may not grant a permit which authorizes the continued use of a structure located within 1,000 feet of privately owned littoral residential property, without written consent of the littoral owner.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2005, 79th Leg., ch. 42, Sec. 1, eff. May 13, 2005.

Sec. 33.125. AUTOMATIC REVOCATION AND TERMINATION OF A PERMIT. A permit that authorizes the continued use of a previously unauthorized structure on coastal public land is considered automatically revoked and terminated if the coastal public land on which the structure is located is:

- (1) subsequently leased for public purposes;
- (2) exchanged for littoral property under this chapter; or
- (3) conveyed to a navigation district as provided by law.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.126. TERMINATION OF PERMIT BY BOARD. Each permit shall provide that if the terms of the permit are broken, the permit may be terminated at the option of the board.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.127. TERMS AND RENEWAL OF PERMITS. Permits may be issued for a period of not more than five years and may be renewed at the discretion of the board.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.128. USE OF PREVIOUSLY UNAUTHORIZED STRUCTURES. Previously unauthorized structures for which permits are obtained may be used only for noncommercial, recreational purposes.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.129. PROHIBITIONS ON THE GRANT OF PERMITS. The board may not grant an application for a permit which would violate the public policy of this state as expressed in this chapter and may not grant a permit for any structure not in existence on August 27, 1973.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.130. REPAIRS AND REBUILDING. If a structure for which a permit is issued is severely damaged or destroyed by any means, no major repairs or rebuilding may be undertaken by the permit holder without the approval of the board.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.131. STRUCTURES AS PROPERTY OF THE STATE. A structure presently existing or to be constructed in the future for which a permit is required under Section 33.119 of this code is the

property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 10, eff. Sept. 1, 1993.

Sec. 33.132. REGISTRATION BY BOARD. (a) The registration by the board on or before December 31, 1973, of a structure located in whole or in part on coastal public land on August 27, 1973, and claimed by the person submitting it for registration as an incident of the ownership of littoral property shall not be construed as evidence of the acquiescence of the state in the claim by the owner.

(b) Failure of the owner to register the structure estops the owner from making any further claim of right against the state in the structure and renders the structure a nuisance per se subject to abatement by the state at the expense of the littoral owner.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.133. REMEDIES CUMULATIVE. Remedies provided in this subchapter are cumulative of all other remedies which may be applicable, including those remedies arising from the power of a court to enforce its jurisdiction and its judgments.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.134. USE AND DEVELOPMENT OF LAND BY LITTORAL OWNER. None of the provisions of this chapter shall prevent the littoral owner of property from developing or otherwise using his property in a lawful manner, and this chapter shall not be construed to confer on the board the authority to regulate, control, or restrict the use or development of the property.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.135. NOTICE TO PURCHASER OR GRANTEE OF COASTAL AREA PROPERTY. (a) A person who sells, transfers, or conveys an interest other than a mineral, leasehold, or security interest in real property adjoining and abutting the tidally influenced waters of the state must include the following notice as a part of a written executory contract for the sale, transfer, or conveyance:

"(1) The real property described in and subject to this contract adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the property described in this contract may gain or lose portions of the tract because of changes in the boundary.

"NOTICE REGARDING COASTAL AREA PROPERTY

"(2) The seller, transferor, or grantor has no knowledge of any prior fill as it relates to the property described in and subject to this contract.

"(3) State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.

"(4) The purchaser or grantee is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the surveying division of the General Land Office in Austin."

(b) If property described under Subsection (a) of this section is sold, transferred, or conveyed without an executory contract for conveyance, a written statement containing the notice prescribed by that subsection must be delivered to the grantee for execution and acknowledgement of receipt before the conveyance is recorded.

(c) Failure to include the statement in an executory contract for conveyance shall be grounds for the purchaser to terminate such contract, and upon termination any earnest money shall be returned to the party making the deposit.

(d) Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute a deceptive act under Section 17.46, Business & Commerce Code.

(e) This section or the action of any party subject to this section does not diminish or modify the beach access and use rights of the public as acquired by statute or under common law.

Added by Acts 1993, 73rd Leg., ch. 991, Sec. 11, eff. Sept. 1, 1993.

Sec. 33.136. PROPERTY RIGHTS: PRESERVATION OF LITTORAL RIGHTS. (a) Notwithstanding any law to the contrary, a person may not undertake an action on or immediately landward of a public beach or submerged land, including state mineral lands, relating to erosion response that will cause or contribute to shoreline alteration before the person has conducted and filed a coastal boundary survey in the same manner as the survey of public land required by Chapter 21 and any applicable rule of the commissioner and has obtained any required lease or other instrument from the commissioner or board, as applicable. A person is not required to obtain a lease or other instrument from the commissioner or board if the action is confined to land owned by a navigation district or municipality. On filing of the survey, the shoreline depicted on the survey is a fixed line for the purpose of locating a shoreline boundary, subject to movement landward of that line. A coastal boundary survey conducted under this section may not be filed until the commissioner gives notice of approval under Subsection (c).

(b) The survey must contain the following statement: "NOTICE: This survey was performed in accordance with Section 33.136, Natural Resources Code, for the purpose of evidencing the location of the shoreline in the area depicted in this survey as that shoreline existed before commencement of erosion response activity, as required by Chapter 33, Natural Resources Code. The line depicted on this survey fixes the shoreline for the purpose of locating a shoreline boundary, subject to movement landward as provided by Section 33.136, Natural Resources Code."

(c) Within 30 days after the date the commissioner approves a coastal boundary survey under this section, the commissioner shall provide notice of that approval by:

- (1) publication in the Texas Register;
- (2) publication for two consecutive weeks in a newspaper of general circulation in the county or counties in which the land depicted in the survey is located; and
- (3) filing a copy of the approval in the archives and records division of the land office.

(d) A person who claims title to permanent school fund land as a result of accretion, reliction, or avulsion in the coastal zone on or after September 1, 1999, must, in order to prevail in the claim, prove that:

- (1) a change in the shoreline has occurred;
- (2) the change did not occur as a result of the claimant's actions, the action of any predecessor in title, the action of any grantee, assignee, licensee, or person authorized by the claimant to use the claimant's land, or an erosion response activity; and
- (3) the claimant is entitled to benefit from the change.

(e) An upland owner who, because of erosion response activity undertaken by the commissioner, ceases to hold title to land that extends to the shoreline as altered by the erosion response activity is entitled to continue to exercise all littoral rights possessed by that owner before the date the erosion response activity commenced, including rights of ingress, egress, boating, bathing, and fishing.

(f) In this section, "erosion response" means an action intended to address coastal erosion, mitigate the effect of coastal erosion, or maintain or enhance beach stability or width. The term includes:

- (1) beach nourishment;
- (2) sediment management;
- (3) beneficial use of dredged material;
- (4) construction of breakwaters;
- (5) dune creation or enhancement; and
- (6) revegetation.

Added by Acts 1997, 75th Leg., ch. 938, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 508, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER E. ENFORCEMENT AND APPEAL

Sec. 33.171. ENFORCEMENT OF RIGHTS OF LITTORAL OWNERS. (a) A littoral owner whose rights may be affected by any action of the board under this chapter may bring suit for a declaratory judgment

against the State of Texas in a district court in Travis County to try the issues.

(b) Service of citation may be obtained by serving the commissioner.

(c) The state is entitled to receive notice of a claim against the School Land Board under this subchapter not later than the 180th day after the day the action of the board giving rise to the claim occurred. The notice must reasonably describe:

(1) the action of the board that affected the littoral owner's rights;

(2) the time and place of the board's action; and

(3) the nature of the claim, specifying, as applicable, the manner in which:

(A) the board's action affected the title to or boundary of coastal public land to the detriment of the littoral owner;

(B) the board's action affected an interest in land sought or granted under this chapter; or

(C) the board violated this chapter or a rule adopted by the board under this chapter.

(d) The notice requirement of Subsection (c) is a jurisdictional prerequisite to the institution of suit under this section regardless of actual notice, express or implied, to the board or the state.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 147, Sec. 1, eff. Sept. 1, 2003.

Sec. 33.172. VENUE. Unless expressly waived in writing by the attorney general, venue lies in Travis County in any proceeding:

(1) arising out of an alleged violation of any provision of this chapter or any rule adopted by the board under this chapter;

(2) touching any interest in land sought or granted under this chapter; and

(3) to determine the boundaries or title to any coastal public land.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.173. RIGHT TO APPEAL. Any interested party who is aggrieved by an action of the board under this chapter may appeal the action by filing a petition in a district court in Travis County.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.174. TIME FOR FILING PETITION. The petition for the appeal must be filed within 30 days after the date of the final action of the board or 30 days after the effective date of the action, whichever is the later date.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.175. SERVICE OF CITATION. Service of citation on the board may be accomplished by serving the commissioner.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.176. ISSUE ON APPEAL. In an appeal of a board action, the issue is whether the action is invalid, arbitrary, or unreasonable.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. COASTAL COORDINATION

Sec. 33.201. SHORT TITLE. This subchapter may be cited as the Coastal Coordination Act.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.

Sec. 33.202. POLICY. (a) It is declared to be the policy of this state to make more effective and efficient use of public funds and provide for more effective and efficient management of coastal natural resource areas, and to better serve the people of Texas by:

(1) continually reviewing the principal coastal problems of state concern, coordinating the performance of government programs affecting coastal natural resource areas, and coordinating the measures required to resolve identified coastal problems; and

(2) making all coastal management processes more visible, accessible, coherent, consistent, and accountable to the people of Texas.

(b) It is declared to be the policy of this state that the chief executive officer of the state should represent the State of Texas in discussions and negotiations with the federal government with regard to the effect of federal actions on the coastal programs and policies of the State of Texas.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 3, eff. June 8, 1995.

Sec. 33.203. DEFINITIONS. In this subchapter:

(1) "Coastal natural resource areas" means:

- (A) coastal barriers;
- (B) coastal historic areas;
- (C) coastal preserves;
- (D) coastal shore areas;
- (E) coastal wetlands;
- (F) critical dune areas;
- (G) critical erosion areas;
- (H) gulf beaches;
- (I) hard substrate reefs;
- (J) oyster reefs;
- (K) submerged land;
- (L) special hazard areas;
- (M) submerged aquatic vegetation;
- (N) tidal sand or mud flats;
- (O) water of the open Gulf of Mexico; and
- (P) water under tidal influence.

(2) "Coastal barrier" means an undeveloped area on a barrier island, peninsula, or other protected area, as designated by United States Fish and Wildlife Service maps.

(3) "Coastal historic area" means a site that is specially identified in rules adopted by the Texas Historical Commission or the Antiquities Committee as being coastal in character and that is:

(A) a site on the National Register of Historic Places, designated under 16 U.S.C. Section 470a and 36 CFR Part 63, Chapter 1; or

(B) a state archaeological landmark, as defined by Subchapter D, Chapter 191.

(4) "Coastal preserve" means any land, including a park or wildlife management area, that is owned by the state and that is:

(A) subject to Chapter 26, Parks and Wildlife Code, because it is a park, recreation area, scientific area, wildlife refuge, or historic site; and

(B) designated by the Parks and Wildlife Commission as being coastal in character.

(5) "Coastal shore area" means an area within 100 feet landward of the highwater mark on submerged land.

(6) "Coastal waters" means waters under tidal influence and waters of the open Gulf of Mexico.

(7) "Coastal wetlands" means wetlands, as the term is defined by Section 11.502, Water Code, located:

(A) seaward of the coastal facility designation line established by rules adopted under Chapter 40;

(B) within rivers and streams, to the extent of tidal influence, as shown on the Texas Natural Resource Conservation Commission's stream segment maps, excluding the portion of the Trinity River located in Liberty County;

(C) within one mile of the mean high tide of the portion of river and stream described by Paragraph (B), except as provided by Paragraphs (D) and (E);

(D) in the case of wetlands bordering the portion of the Trinity River to which Paragraph (B) applies:

(i) within the area located between the mean high tide line on the western shoreline of that portion of the river and Farm-to-Market Road 565 and Farm-to-Market Road 1409; or

(ii) within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 563; or

(E) in the case of wetlands bordering the portion of the Neches River described by Paragraph (B):

(i) within one mile from the mean high tide line of the western shoreline of that portion of the river described by Paragraph (B); or

(ii) within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 105.

(8) "Critical area" means a coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat.

(9) "Critical dune area" means a protected sand dune complex on the Gulf shoreline within 1,000 feet of mean high tide designated by the land commissioner under Section 63.121.

(10) "Critical erosion area" has the meaning assigned to the term "critical coastal erosion area" by Section 33.601(4).

(11) "Gulf beach" means a beach bordering the Gulf of Mexico that is:

(A) located inland from the mean low tide line to the natural line of vegetation bordering the seaward shore of the Gulf of Mexico; or

(B) part of a contiguous beach area to which the public has a right of use or easement:

(i) continuously held by the public; or

(ii) acquired by the public by prescription, dedication, or estoppel.

(12) "Hard substrate reef" means a naturally occurring hard substrate formation, including a rock outcrop or serpulid worm reef, living or dead, in an intertidal or subtidal area.

(13) "Oyster reef" means a natural or artificial formation that is:

(A) composed of oyster shell, live oysters, and other living or dead organisms;

(B) discrete, contiguous, and clearly distinguishable from scattered oyster shell or oysters; and

(C) located in an intertidal or subtidal area.

(14) "Special hazard area" means an area designated under 42 U.S.C. Section 4001 et seq. as having special flood, mudslide or mudflow, or flood-related erosion hazards and shown on a flood hazard boundary map or flood insurance rate map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E.

(15) "Submerged land" means land located under waters under tidal influence or under waters of the open Gulf of Mexico, without regard to whether the land is owned by the state or a person other than the state.

(16) "Submerged aquatic vegetation" means rooted aquatic vegetation growing in permanently inundated areas in estuarine and marine systems.

(17) "Tidal sand or mud flat" means a silt, clay, or sand substrate, without regard to whether it is vegetated by algal mats, that occur in intertidal areas and that are regularly or intermittently exposed and flooded by tides, including tides induced by weather.

(18) "Water of the open Gulf of Mexico" means water in this state, as defined by Section 26.001(5), Water Code, that is part of the open water of the Gulf of Mexico and that is within the territorial limits of the state.

(19) "Water under tidal influence" means water in this state, as defined by Section 26.001(5), Water Code, that is subject to tidal influence according to the Texas Natural Resource Conservation Commission's stream segment map. The term includes coastal wetlands.

(20) "Council" means the Coastal Coordination Council.

(21) "Agency or subdivision" means any state agency, department, board, or commission or political subdivision of the state.

(22) "Coastal management program" means an ongoing, comprehensive program containing the elements required for approval of a program under the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) that is designed to coordinate agencies' management of activities that may adversely affect coastal natural resource areas for the purpose of continually making management of those activities more efficient and effective.

(23) "Agency or subdivision action" means an action described by Section 33.2051 or 33.2053.

(24) "Federal agency activity" means a function

performed by or for a federal agency in the exercise of its statutory responsibility, including financial assistance, the planning, construction, modification, or removal of a public work, facility, or any other structure, and the acquisition, use, or disposal of land or water resources. The term does not include the issuance of a federal license or permit.

(25) "Federal agency action" means a license or permit that a federal agency may issue that represents the proposed federal authorization, approval, or certification needed by the applicant to begin an activity.

(26) "Proposed action" means an agency or subdivision action under consideration by the agency or subdivision, but with respect to which the agency or subdivision has not made a final decision.

(27) "Outer continental shelf plan" means a plan for the exploration or development of, or production from, an area leased under the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331 et seq.) and the rules adopted under that Act that is submitted to the secretary of the United States Department of the Interior after federal approval of the coastal management program. Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.264, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 1997, 75th Leg., ch. 396, Sec. 1, eff. May 28, 1997; Acts 1999, 76th Leg., ch. 508, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 70, Sec. 2, eff. Sept. 1, 2001.

Sec. 33.204. ADMINISTRATION OF COASTAL MANAGEMENT PROGRAM. (a) The council by rule shall adopt goals and policies of the coastal management program. A goal or policy may not require an agency or subdivision to perform an action that would exceed the constitutional or statutory authority of the agency or subdivision to which the goal or policy applies.

(b) The council shall meet once in each calendar quarter and shall set aside time at each meeting for public comment on any issue under the jurisdiction of the council. The commissioner is chair of the council. The chair or any three members of the council may convene special meetings at other times.

(c) Except as provided by Sections 33.205(c)(3) and 33.206(a), the council may act on the agreement of a majority of a quorum of the council.

(d) For each matter to be reviewed by the council under Section 33.205(c) or (d) of this code, the governor shall designate a local elected official from a county or municipality directly affected by the matter under review. The local official shall serve as a nonvoting participant on the council for purposes of reviewing and acting on that matter only.

(e) In conducting reviews under Section 33.205 of this code, the council shall receive and consider the oral or written testimony of any person regarding the coastal management program as the testimony relates to the agency or subdivision action or federal agency action or activity or outer continental shelf plan under review. The council may reasonably limit the length and format of the testimony and the time at which it will be received. Notice of the period during which the testimony will be received shall be published in the Texas Register and in a newspaper of general circulation in each county directly affected by the matter under review before the commencement of that period. The council shall consider only the record before the agency or subdivision involved in the matter under review, the agency's or subdivision's findings, applicable laws and rules, any additional information provided by that agency or subdivision, and public testimony under this subsection, provided that if the agency or subdivision did not hold a hearing, make a record, or make findings, the council may hold a hearing and make findings necessary to a complete and thorough review.

(f) The land office shall assist the council in carrying out its duties. The council members may not receive compensation for services but may receive reimbursement for actual and necessary expenses. The land office, in coordination with other agencies and subdivisions, shall prepare an annual report on the effectiveness of the coastal management program. The land office shall submit the report to the council for approval. On or before January 15 of each odd-numbered year, the land office shall send to the legislature each of the previous two annual reports.

(g) The council may award grants to projects that further the goals and policies of the council. The council shall establish the procedures for making any determination related to awarding a grant.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 3, eff. Sept. 1, 2001.

Sec. 33.2041. COMPOSITION OF COUNCIL; TERMS. (a) The council shall consist of:

(1) the following ex officio members:

(A) the commissioner;

(B) the presiding officer of the Parks and Wildlife Commission or a member of the commission designated by the presiding officer;

(C) the presiding officer of the Texas Natural Resource Conservation Commission or a member of the commission designated by the presiding officer;

(D) a member of the Railroad Commission of Texas appointed by that commission;

(E) the presiding officer of the Texas Water Development Board or a member of the board designated by the presiding officer;

(F) the presiding officer of the Texas Transportation Commission or a member of the commission designated by the presiding officer;

(G) a member of the State Soil and Water Conservation Board appointed by that board; and

(H) the director of the Texas A&M University Sea Grant Program to serve as a nonvoting member; and

(2) the following members to be appointed by the governor with the advice and consent of the senate to serve a two-year term:

(A) a city or county elected official who resides in the coastal area;

(B) an owner of a business located in the coastal area who resides in the coastal area;

(C) a resident from the coastal area; and

(D) a representative of agriculture.

(b) The terms of the positions on the council held by the city or county elected official who resides in the coastal area and the resident from the coastal area expire May 31 of each even-numbered year. The terms of the positions on the council held by the owner of a business located in the coastal area who resides in the coastal area and the representative of agriculture expire May 31 of each odd-numbered year.

(c) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 4, eff. Sept. 1, 2001.

Sec. 33.2042. ELIGIBILITY OF COUNCIL MEMBERS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a public member of the council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field directly related to the operations of the council; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field directly related to the operations of the council.

(c) A person may not be a member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 4, eff. Sept. 1, 2001.

Sec. 33.2043. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by Section 33.2041;

(2) does not maintain during service on the council the qualifications required by Section 33.2041;

(3) is ineligible for membership under Section 33.2042(b) or (c);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) If the council chair has knowledge that a potential ground for removal exists, the council chair shall notify the appointing authority and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 4, eff. Sept. 1, 2001.

Sec. 33.2044. STANDARDS OF CONDUCT. The council chair or the council chair's designee shall provide to members of the council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 4, eff. Sept. 1, 2001.

Sec. 33.2045. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the council;
- (2) the programs operated by the council;
- (3) the role and functions of the council;
- (4) the rules of the council with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the council;
- (6) the results of the most recent formal audit of the council;

- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict of interest laws; and
- (8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 4, eff. Sept. 1, 2001.

Sec. 33.205. CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM; COUNCIL REVIEW. (a) An agency or subdivision that takes an agency or subdivision action described by Section 33.2051 or 33.2053 that may adversely affect a coastal natural resource area shall comply with the goals and policies of the coastal management program.

(b) An agency or subdivision subject to the requirements of Subsection (a) shall affirm that it has taken into account the goals and policies of the coastal management program by issuing a written determination that a proposed action described by Section 33.2051 or 33.2053 is consistent with the program goals and policies.

(c) The council may not review a proposed action subject to the requirements of Subsections (a) and (b) of this section for consistency with the goals and policies of the coastal management program unless:

(1) the consistency determination for the proposed action was contested by:

(A) a council member or an agency that was a party in a formal hearing under Chapter 2001, Government Code, or in an alternative dispute resolution process; or

(B) a council member or other person by the filing of written comments with the agency before the action was proposed if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available;

(2) a person described by Subdivision (1) of this subsection files a request for referral alleging a significant unresolved dispute regarding the proposed action's consistency with the goals and policies of the coastal management program; and

(3) any three members of the council other than the director of the Texas A&M University Sea Grant Program agree that there is a significant unresolved dispute regarding the proposed action's consistency with the goals and policies of the coastal management program and the matter is placed on the agenda for a council meeting.

(d) If consistency review thresholds are in effect under Section 33.2052, the council may not review a proposed action subject to the requirements of Subsections (a) and (b) for consistency with the goals and policies of the coastal management program unless the requirements of Subsection (c) are satisfied and:

(1) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is available:

(A) the action exceeds the applicable thresholds and the agency's consistency determination was contested in a formal hearing or in an alternative dispute resolution process; or

(B) the action does not exceed the applicable thresholds but may directly and adversely affect a critical area, critical dune area, coastal park, wildlife management area or preserve, or gulf beach and a state agency contested the agency's consistency determination in a formal hearing; or

(2) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available to contest the agency's determination, the action exceeds the applicable thresholds.

(e) The council must consider and act on a matter referred under Subsection (c) or (d) before the 26th day after the date the agency or subdivision proposed the action. For purposes of this section, an action subject to the contested case provisions of Chapter 2001, Government Code, is proposed when notice of a decision or order is issued under Section 2001.142, Government Code.

(f) The council by rule shall establish a process by which an applicant for a permit or other proposed action described in Section 33.2053, or an agency or subdivision proposing an action, may request and receive a preliminary consistency review. The rules shall:

(1) create a permitting assistance group composed of representatives of council member agencies and other interested council members to coordinate the preliminary reviews; and

(2) require that the following written information be produced not later than the 45th day after the date of the request for preliminary review:

(A) a statement from each agency or subdivision required to permit or approve the project as to whether the agency or subdivision anticipates approving or denying the application;

(B) if an agency or subdivision intends to deny an application, the agency's or subdivision's explanation of the grounds for denial and recommendations for resolving the grounds in a way that would allow the application to be approved;

(C) if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the goals and policies of the coastal management program; and

(D) if the project is likely to be found inconsistent with the goals and policies of the coastal management program, an explanation and recommendation for resolving the inconsistency in a way that would allow the project to be found consistent.

(g) The council by rule shall establish a process by which an individual or small business may request and receive assistance with filing applications for permits or other proposed actions described by Section 33.2053. The rules shall provide for:

(1) the coordination of preapplication assistance through the permitting assistance group; and

(2) the provision of the following, by the permitting

assistance group, to an individual or a small business, on request:
(A) a list of the permits or other approvals necessary for the project;

(B) a simple, understandable statement of all permit requirements;

(C) a coordinated schedule for each agency's or subdivision's decision on the action;

(D) a list of all the information the agencies or subdivisions need to declare the applications for the permits or other approvals administratively complete;

(E) assistance in completing the applications as needed; and

(F) if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the goals and policies of the coastal management program.

(h) If an agency, subdivision, or applicant has received a preliminary finding of consistency under Subsection (f)(2)(C) or (g)(2)(F) and a request for referral was filed on that action under Subsection (c)(2), the council may accept the request for referral only if the agency or subdivision has substantially changed the permit or proposed action since the preliminary finding was issued. Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 5, eff. Sept. 1, 2001.

Sec. 33.2051. AGENCY RULEMAKING ACTIONS. (a) The land office shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing the prevention of, response to, or remediation of a coastal oil spill.

(b) The Texas Natural Resource Conservation Commission shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing:

- (1) air pollutant emissions;
- (2) on-site sewage disposal systems; or
- (3) underground storage tanks.

(c) The State Soil and Water Conservation Board shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing agricultural or silvicultural nonpoint source pollution.

(d) An agency shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing an individual action described by Section 33.2053.

(e) The council may not review a proposed rule of the Texas Department of Agriculture.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

Sec. 33.2052. CERTIFICATION OF AGENCY RULES; AGENCY ACTIONS CONSIDERED CONSISTENT. (a) The council by rule shall establish a process by which an agency may submit rules and rule amendments described by Section 33.2051 to the council for review and certification for consistency with the goals and policies of the coastal management program.

(b) The process must provide that an agency may submit to the council consistency review thresholds for the agency's actions described in Section 33.2053. After the council certifies that an agency's rules are consistent and approves the agency's thresholds, the agency's consistency determination under Section 33.205(b) for an action is final and is not subject to referral and review, except as provided by Section 33.205(d).

(c) The council by rule shall provide that the council may revoke its certification under Subsection (b) if the council finds that an agency has:

(1) implemented certified rules in a manner that conflicts with the goals and policies of the coastal management program; or

(2) amended certified rules in a manner inconsistent with the goals and policies of the coastal management program.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

Sec. 33.2053. INDIVIDUAL AGENCY OR SUBDIVISION ACTIONS. (a) The land office, the School Land Board, or a board for lease of state-owned lands shall comply with Sections 33.205(a) and (b) when issuing or approving:

- (1) a mineral lease plan of operations;
- (2) a geophysical or geochemical permit;
- (3) a coastal easement;
- (4) a miscellaneous easement;
- (5) a coastal lease;

- (6) a surface lease;
- (7) a structure registration;
- (8) a cabin permit;
- (9) a navigation district lease;
- (10) certification of a local government beach access or dune protection plan; or
- (11) an agency or subdivision wetlands mitigation bank.

(b) The Public Utility Commission of Texas shall comply with Sections 33.205(a) and (b) when issuing a certificate of convenience and necessity.

(c) The Railroad Commission of Texas shall comply with Sections 33.205(a) and (b) when issuing:

- (1) a wastewater discharge permit;
- (2) a waste disposal or storage pit permit; or
- (3) a certification of a federal permit for the discharge of dredge or fill material.

(d) The Texas Transportation Commission shall comply with Sections 33.205(a) and (b) when approving:

- (1) an acquisition of a site for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway; or
- (2) a transportation construction project or maintenance program.

(e) The Texas Historical Commission and the Antiquities Committee shall comply with Sections 33.205(a) and (b) when issuing:

- (1) a permit for destruction, alteration, or taking of a coastal historic area; or
- (2) a review of a federal undertaking affecting a coastal historic area.

(f) The Texas Natural Resource Conservation Commission shall comply with Sections 33.205(a) and (b) when issuing or approving:

- (1) a wastewater discharge permit;
- (2) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters;

- (3) a permit for solid or hazardous waste treatment, storage, or disposal;

- (4) creation of a special purpose district or approval of bonds for the purpose of construction of infrastructure on coastal barriers;

- (5) levee improvement or flood control projects;
- (6) a certification of a federal permit for the discharge of dredge or fill material;

- (7) a declaration of an emergency and request for an emergency release of water;

- (8) a new permit for an annual appropriation of:
 - (A) 5,000 or more acre-feet of water within the program boundary; or

- (B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

- (9) an amendment to a water permit for an increase in an annual appropriation of:

- (A) 5,000 or more acre-feet of water within the program boundary; or

- (B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast; or

- (10) a change in the purpose of use of an annual appropriation of water to a more consumptive use of:

- (A) 5,000 or more acre-feet of water within the program boundary; or

- (B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast.

(g) The council may not review an action of the Texas Natural Resource Conservation Commission described by Subsections (f)(8)-(10) taken to implement a part of the Trans-Texas Water Program that the Trans-Texas Water Program Policy Management Committee has found to be consistent with the goals and policies of the coastal management program. To find that the program is consistent with the goals and policies, the Trans-Texas Water Program Policy Management Committee must:

- (1) include at least three members of the council, or representatives of those members, as voting members of the

committee; and

(2) make the finding by a majority vote of those members or their representatives.

(h) The Parks and Wildlife Department shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) an oyster lease;

(2) a permit for taking, transporting, or possessing threatened or endangered species;

(3) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(4) development by a person other than the Parks and Wildlife Department that requires the use or taking of any public land in a state park, wildlife management area, or preserve.

(i) A subdivision shall comply with Sections 33.205(a) and (b) when issuing a dune protection permit or beachfront construction certificate that authorizes:

(1) construction activity that is located 200 feet or less landward of the line of vegetation and that results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;

(2) construction activity that results in the disturbance of more than 7,500 cubic yards of dunes;

(3) a coastal shore protection project undertaken on a gulf beach or 200 feet or less landward of the line of vegetation and that affects more than 500 linear feet of gulf beach; or

(4) a closure, relocation, or reduction in existing public beach access or public beach access designated in an approved local government beach access plan, other than for a short term.

(j) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval, or other action is not an action under this section if the action is taken under a rule that the council has certified under Section 33.2052 and:

(1) for a wastewater discharge permit, if the action is not a major permit modification that would:

(A) increase pollutant loads to coastal waters; or

(B) result in relocation of an outfall to a critical area;

(2) for solid, hazardous, or nonhazardous waste permits, if the action is not a Class III modification under rules of the Texas Natural Resource Conservation Commission; or

(3) for any other action, if the action:

(A) only extends the period of the existing authorization and does not authorize new or additional work or activity; or

(B) is not directly relevant to Sections 33.205(a) and (b).

(k) The council shall establish a program boundary to limit the geographic area in which the requirements of Sections 33.205(a) and (b) apply. The boundary is the coastal facility designation line as defined by Appendix 1 to 31 TAC Section 19.2 as that appendix existed on the effective date of this section, as modified by Section 33.203(7). Except as provided by Subsections (f)(8)-(10), this subchapter does not apply to an agency action authorizing an activity outside the program boundary.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

Sec. 33.206. COUNCIL ACTION. (a) A proposed action is consistent with the goals and policies of the coastal management program and approved by the council unless, on the affirmative vote of at least two-thirds of the members of the council, the council determines the action to be inconsistent with the coastal management program and protests the action.

(b) If the council protests the proposed action, the council shall report its findings on the matter to the agency or subdivision. The report shall specify how the proposed action is inconsistent with the goals and policies of the coastal management program and include specific recommendations of the council regarding how the proposed action may be modified or amended to make it consistent with the program. Before the 21st day after the date the agency or subdivision receives the report, the agency or subdivision shall review the findings and recommendations and determine whether to modify or amend the proposed action to make it consistent with the goals and policies of the coastal management program and shall notify the council of its decision.

(c) If an agency or subdivision does not modify or amend a proposed action to be consistent with the goals and policies of the coastal management program, the council shall request the attorney general to issue an opinion on the consistency of the proposed action with the coastal management program. The agency or subdivision is stayed from taking the proposed action until the attorney general issues the opinion. The attorney general shall issue an opinion before the 26th day after the date the council requests the opinion.

(d) The council shall adopt procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate the provisions of federal regulations governing those reviews. The rules shall provide that the chair or any three members may request additional information from a federal agency or additional time for review as provided by the federal regulations.

(e) The council shall review any federal action, activity, or outer continental shelf plan that any three members of the council agree presents a significant unresolved issue regarding consistency with the goals and policies of the coastal management program and place the matter on the agenda of a meeting of the council for review.

(f) If an activity requiring an agency or subdivision action described by Section 33.2053 that falls below thresholds in effect under Section 33.2052 also requires an equivalent federal permit or license, the council may only determine the agency or subdivision action's consistency. If an activity requiring an agency or subdivision action above thresholds requires an equivalent federal permit or license, the council may determine the consistency of the agency or subdivision action or the federal license or permit, but not both. The determination regarding the consistency of an action made by the council under this subsection constitutes the state's determination regarding consistency of the equivalent agency or subdivision action or federal action.

(g) If, after review, the council finds a proposed federal agency action or activity or outer continental shelf plan is inconsistent with the coastal management program, and the federal agency does not modify the action, activity, or outer continental shelf plan to achieve consistency with the program, the governor, with the assistance of the chair of the council, may seek mediation of the matter in accordance with federal law.

(h) The council may not protest a proposed action by an agency or subdivision pertaining to an application filed with that agency or subdivision before the date the coastal management program is adopted.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

Sec. 33.207. COUNCIL RECOMMENDATIONS. In addition to the report required by Section 33.206, the council:

(1) may periodically submit recommendations to an agency or subdivision designed to encourage the agency or subdivision to carry out its functions in a manner consistent with the coastal management program, including recommendations for methods to simplify governmental procedures and changes in applicable rules or statutes; and

(2) shall report to the legislature on:

(A) recommended statutory changes needed to make more effective and efficient use of public funds and provide for more effective and efficient management of coastal natural resource areas, including recommendations on methods to simplify governmental procedures;

(B) agency or subdivision actions that are not consistent with the coastal management program; and

(C) population growth of, infrastructure needs of, and use of resources on the coast.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 6, eff. Sept. 1, 2001.

Sec. 33.208. ENFORCEMENT. (a) The agency or subdivision with jurisdiction over a proposed action shall enforce the provisions of the coastal management program.

(b) If the attorney general issues an opinion under Section 33.206(c) that a proposed agency or subdivision action is inconsistent with the coastal management program and the agency or subdivision fails to implement the council's recommendation

regarding the action, the attorney general shall file suit in a district court of Travis County to enforce this subchapter. The court shall consider the attorney general's opinion in determining whether the proposed action is consistent with the coastal management program.

(c) Notwithstanding the request of an opinion from, or the filing of suit by, the attorney general, the council and the agency or subdivision may enter into a settlement agreement with regard to the proposed action. If the council and the agency or subdivision enter into a settlement agreement, the council may rescind its request for an opinion from the attorney general.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

Sec. 33.209. PROHIBITION ON SPECIAL AREA MANAGEMENT PLANS. The council may not develop or approve a special area management plan, including a plan for an area designated under the national estuary program.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

Sec. 33.210. PRIVATE PROPERTY. The requirements of this subchapter may not be applied in a manner that would result in the taking, damage, or destruction of property without adequate compensation.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

Sec. 33.211. SUNSET PROVISION. The Coastal Coordination Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this subchapter expires September 1, 2013.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1169, Sec. 1.01, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 70, Sec. 7, eff. Sept. 1, 2001.

Sec. 33.212. COMPLAINTS. (a) The council shall maintain a file on each written complaint filed with the council. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the council;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the council closed the file without taking action other than to investigate the complaint.

(b) The council shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) The council, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 8, eff. Sept. 1, 2001.

SUBCHAPTER G. COASTAL WETLAND ACQUISITION

Sec. 33.231. SHORT TITLE. This subchapter may be cited as the Coastal Wetland Acquisition Act.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.232. POLICY. It is the declared policy of the state:

- (1) to protect the property rights of those who sell interests in land to the state by fairly compensating the sellers;
- (2) to protect that coastal wetland which is most essential to the public interest by acquiring fee and lesser interests in the coastal wetland and managing it in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland; and
- (3) to assure that the state does not expend funds to acquire any coastal wetland to which it already holds a valid title at the time of the expenditure.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.233. DEFINITIONS. In this subchapter:

- (1) "Acquiring agency" means the Parks and Wildlife Department.

(2) "Land office " means the General Land Office.

(3) "Coastal wetland" means wetlands underlying or adjacent to tidal waters in the coastal area.

(4) "Wetlands" has the meaning assigned under Subchapter J, Chapter 11, Water Code.

(5) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 4, eff. June 5, 1991.

Sec. 33.234. DUTIES AND AUTHORITY OF ACQUIRING AGENCY. (a) The acquiring agency shall do the following:

(1) accept gifts, grants, or devises of interests in land;

(2) acquire, by purchase or condemnation, fee and lesser interests in the surface estate in coastal wetland certified as most essential to protection of the public interest, provided that in each instance in which an interest in land is acquired by the acquiring agency pursuant to this section, a sufficient interest shall be acquired to preserve and protect the productivity and integrity of such land as coastal wetland; and

(3) manage interests in land acquired pursuant to this section in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland.

(b) This subchapter shall not be construed to authorize the condemnation of any interest in the mineral estate in any coastal wetland.

(c) The acquiring agency shall promulgate reasonable rules and regulations necessary to preserve and protect the productivity and integrity of the land as coastal wetland acquired pursuant to this subchapter. The rules and regulations shall include regulations governing activities conducted on the land in conjunction with mineral exploration, development, and production.

(d) If the acquiring agency seeks to condemn an interest less than the fee interest in the surface estate in any coastal wetland, the owner of the coastal wetland may demand that the acquiring agency instead seek condemnation of the fee interest in the surface estate in the coastal wetland. Upon this demand, the acquiring agency shall either:

(1) seek to condemn the fee interest in the surface estate in the coastal wetland; or

(2) cease all condemnation proceedings pursuant to this subchapter against the coastal wetland.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 5, eff. June 5, 1991.

Sec. 33.235. AGRICULTURAL EXEMPTION. Coastal wetland used only for farming or ranching activities, including maintenance and repair of buildings, earthworks, and other structures, shall not be subject to any power of condemnation exercised pursuant to this subchapter. However, this exemption from condemnation shall terminate upon the receipt by any state or federal agency of an application for a permit, license, or other authorization to conduct on the wetland, activities other than farming and ranching activities, including irrigation and water well drilling, and activities necessary to exploration, development, or production of the underlying mineral estate.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.236. DUTIES AND AUTHORITY TO CERTIFY. (a) The land office and the acquiring agency, in coordination, shall do the following:

(1) certify coastal wetlands which are most essential to the public interest in accordance with criteria developed by the land office and the acquiring agency under Chapter 14, Parks and Wildlife Code, and this subchapter, assign priorities for acquisition of interests in the coastal wetland, and revoke certification made pursuant to this section when it is in the public interest to do so; and

(2) publicize the importance to the public interest of coastal wetland in general, and of designated coastal wetland in particular.

(b) A certification, assignment of priority for

acquisition, or revocation of certification made pursuant to this subchapter does not constitute a "contested case" within the meaning of Chapter 2001, Government Code.

(c) to (h) Repealed by Acts 1991, 72nd Leg., ch. 265, Sec. 7, eff. June 5, 1991.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 6, 7, eff. June 5, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 33.237. MOST ESSENTIAL COASTAL WETLAND CERTIFICATION. (a) In selecting and certifying coastal wetland most essential to the public interest, and in assigning priorities of acquisition to coastal wetland, the land office and the acquiring agency shall consider the following criteria:

(1) whether the land is coastal wetland within the definition, intent, and purpose of this subchapter;

(2) whether the state owns the coastal wetland or claims title to it, which title can be validated by bringing an appropriate action in a court of law;

(3) whether the biological, geological, or physical characteristics of the coastal wetland, including the interrelationship of the coastal wetland with other coastal wetland, is essential to the public interest;

(4) the degree to which the coastal wetland is in danger of being altered, damaged, or destroyed, and the imminence of that danger; and

(5) the cost of acquiring the coastal wetland.

(b) The legislature declares that certifications, assignments of priority for acquisition, and revocations of certifications made pursuant to Section 33.235 of this code are made only for the purpose of administering the provisions of this subchapter. No certifications, assignments of priority for acquisition, or revocations of certification shall be grounds for an inference, or admissible in a court of law to prove, that any coastal wetland is of greater or lesser value than any other coastal wetland for any purpose other than administering the provisions of this subchapter.

(c) A certification made pursuant to this subchapter shall expire one year from the date of certification.

(d) If on or before the expiration date of such certification the acquiring agency files suit in a court of law to condemn the certified coastal wetland, the certification shall extend until the suit is settled, dismissed, or otherwise terminated.

(e) If a contract of sale between the state and the owner of the certified coastal wetland is entered into on or before the expiration date of the certification, the certification shall extend until title to the coastal wetland is conveyed to the state or the contract is rescinded, invalidated, or otherwise terminated. Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 8, eff. June 5, 1991.

Sec. 33.238. FUNDING. The acquiring agency may compensate the seller of land acquired pursuant to this subchapter with funds obtained through:

(1) gift, grant, or devise;

(2) legislative appropriation; or

(3) gift or grant from the United States.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

SUBCHAPTER H. COASTAL EROSION

Sec. 33.601. DEFINITIONS. In this subchapter:

(1) "Account" means the coastal erosion response account established under Section 33.604.

(2) "Beach nourishment" means the placement of beach-quality sediment on an eroded beach to restore it as a recreational beach, provide storm protection for upland property, maintain a restored beach by the replacement of sand, or serve other similar beneficial purposes.

(3) "Coastal erosion" means the loss of land, marshes, wetlands, beaches, or other coastal features within the coastal zone because of the actions of wind, waves, tides, storm surges, subsidence, or other forces.

(4) "Critical coastal erosion area" means a coastal area that is experiencing historical erosion, according to the most

recently published data of the Bureau of Economic Geology of The University of Texas at Austin, that the commissioner finds to be a threat to:

- (A) public health, safety, or welfare;
- (B) public beach use or access;
- (C) general recreation;
- (D) traffic safety;
- (E) public property or infrastructure;
- (F) private commercial or residential property;
- (G) fish or wildlife habitat; or
- (H) an area of regional or national importance.

(5) "Erosion response project" means an action intended to address or mitigate coastal erosion, including beach nourishment, sediment management, beneficial use of dredged material, creation or enhancement of a dune, wetland, or marsh, and construction of a breakwater, bulkhead, groin, jetty, or other structure.

(6) "Hard structure" means an erosion response structure such as a bulkhead, seawall, revetment, jetty, groin, or similar structure that is the functional equivalent of one of those structures.

(7) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(8) "Local government" means a political subdivision of this state.

(9) "Project cooperation agreement" means a contract executed by the land office and a qualified project partner that explicitly defines the terms under which a study or project will be conducted.

(10) "Public beach" has the meaning assigned by Section 61.013.

(11) "Qualified project partner" means a local government, state or federal agency, institution of higher education, homeowners' association, or other public or private entity that enters into an agreement with the land office to finance, study, design, install, or maintain an erosion response project.

(12) "Shared project cost" means a project cost identified by the commissioner and established in a project cooperation agreement that will be shared with a qualified project partner.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.602. COASTAL EROSION DUTIES AND AUTHORITY. (a) The land office shall implement a program of coastal erosion avoidance, remediation, and planning. The commissioner shall ensure that erosion avoidance, remediation, and planning protect the common law rights of the public in public beaches as affirmed by Subchapter B, Chapter 61.

(b) The commissioner shall publish and periodically update a coastal erosion response plan. The commissioner shall develop the plan in coordination with state and federal agencies and local governments and provide for public input on the plan. The plan must identify critical coastal erosion areas and prioritize coastal erosion response studies and projects so that:

- (1) benefits are balanced throughout the coast;
- (2) federal and local financial participation is maximized;
- (3) studies and projects are scheduled to achieve efficiencies and economies of scale; and
- (4) the severity of erosion effects in each area is taken into account.

(c) The commissioner may adopt rules necessary to implement this subchapter.

(d) The commissioner shall adopt rules requiring that beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state be placed on eroding beaches or to restore eroding wetlands wherever practicable.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.601 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1405, Sec. 1, eff. Sept. 1, 2001.

Sec. 33.603. COASTAL EROSION STUDIES AND PROJECTS. (a) The land office shall undertake coastal erosion studies, demonstration projects, and response projects if the land office receives legislative appropriations or other funding for that purpose. If

reasonable and appropriate, the land office shall work in conjunction with other state agencies, local governments, federal agencies, including the United States Army Corps of Engineers, or other qualified project partners in undertaking those studies and projects.

(b) The studies and projects shall address:

(1) assessment of the feasibility, cost, and financing of different methods of avoiding, slowing, or remedying coastal erosion;

(2) beneficial placement of dredged material where appropriate to replenish eroded public beach, bay shore, marsh, and dune areas;

(3) public beach, bay shore, and marsh nourishment or restoration projects using sediments other than material from navigational or other dredging projects;

(4) guidelines on grain size and toxicity level;

(5) the economic, natural resource, and other benefits of coastal erosion projects;

(6) the protection, revegetation, and restoration of dunes;

(7) the planting of vegetation as a means of inhibiting bay shore erosion and projects developing and cultivating disease-resistant vegetation adapted to local conditions;

(8) the construction or retrofitting of dams, jetties, groins, and other impoundment structures, provided that the structures include sediment bypassing systems;

(9) estimating the quantity and quality of sediment trapped by reservoirs, navigation channels, and placement areas and identification of other sediment sources;

(10) the use of hard or soft structures on bay shorelines as a method of avoiding, slowing, or remedying erosion;

(11) storm damage mitigation, post-storm damage assessment, debris removal, and removal and relocation of structures from public beaches;

(12) structural shoreline protection projects that use innovative technologies designed or engineered to minimize beach scour; and

(13) other studies or projects the commissioner considers necessary or appropriate to implement this subchapter.

(c) An agreement between the commissioner and a qualified project partner to undertake a coastal erosion response study or project:

(1) must require the qualified project partner to pay a specified percentage of the shared project cost that is not less than the minimum amount prescribed by Subsection (e):

(A) before completion of the project; or

(B) following completion of the project, in accordance with a schedule provided by the agreement; and

(2) may contain other terms governing the study or project.

(d) Except as provided by Subsections (b)(8) and (12), this chapter does not authorize the construction or funding of a hard structure on or landward of a public beach.

(e) A qualified project partner must pay:

(1) not less than 25 percent of the shared project cost if the project is a beach nourishment project on a public beach or bay shore; and

(2) not less than 40 percent of the shared project cost if the project is any other coastal erosion response study or project, including:

(A) a marsh restoration project; or

(B) a bay shoreline protection project other than a beach nourishment project.

(f) Notwithstanding Subsections (c) and (e), each biennium the commissioner may undertake one large-scale beach nourishment project on a public beach without requiring a qualified project partner to pay a portion of the shared project cost if the cost of the project does not exceed one-third of the total amount appropriated to the land office for coastal erosion planning and response.

(g) Notwithstanding Subsection (d), each biennium the commissioner may undertake or provide funding for one or more erosion response demonstration projects if the state's portion of the shared project cost does not exceed one-tenth of the total

amount appropriated to the land office for coastal erosion planning and response.

(h) Notwithstanding Subsection (e), the commissioner may determine the percentage of the shared project cost a qualified project partner must pay for a project undertaken pursuant to Subsection (b)(11) for removal of debris or structures, or relocation of structures from the public beach; provided, however, that no money in the account may be used for a project undertaken pursuant to Subsection (b)(11) to purchase real property or reimburse a property owner for the purchase of real property.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.602 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1404, Sec. 1, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 304, Sec. 1, eff. Sept. 1, 2005.

Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. (a) The coastal erosion response account is an account in the general revenue fund that may be appropriated only to the commissioner and used only for the purpose of implementing this subchapter.

(b) The account consists of:

(1) all money appropriated for the purposes of this subchapter;

(2) grants to this state from the United States for the purposes of this subchapter; and

(3) all money received by this state from the sale of dredged material.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.605. USES OF ACCOUNT. (a) Money in the account may be used for any action authorized by this subchapter, except for a restoration project authorized by Section 33.613.

(b) The commissioner must approve an expenditure from the account. In determining whether to approve an expenditure for a study or project, the commissioner shall consider:

(1) the amount of money in the account;

(2) the feasibility and cost-effectiveness of the study or project;

(3) the locations of other existing or proposed erosion response projects;

(4) the needs in other critical coastal erosion areas;

(5) the effect of the study or project on public or private property; and

(6) if the site to be studied or project to be conducted will be located within the jurisdiction of a local government subject to Chapter 61 or 63, whether the local government is adequately administering those chapters.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 867, Sec. 2, eff. June 17, 2005.

Sec. 33.606. GRANTS AND GIFTS. The commissioner may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out the powers and duties provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.603 by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND EDUCATION. (a) The land office shall be responsible for and shall coordinate with other agencies to increase public awareness through public education concerning:

(1) the causes of erosion;

(2) the consequences of erosion;

(3) the importance of barrier islands, dunes, and bays as a natural defense against storms and hurricanes; and

(4) erosion avoidance techniques.

(b) On an ongoing basis, the commissioner, in consultation with the Bureau of Economic Geology of The University of Texas at Austin and coastal county and municipal governments, shall monitor historical erosion rates at each location along the shore of the Gulf of Mexico.

(c) The commissioner shall make historical erosion data accessible, through the Internet and otherwise, to the public and persons receiving the notice required under Section 61.025.

(d) The Bureau of Economic Geology of The University of Texas at Austin shall make historical erosion data relating to a

critical coastal erosion area available to each state agency, local government, or other person responsible for, or with jurisdiction over, the area.

(e) A local government subject to Chapter 61 or 63 is encouraged to use historical erosion data to prepare a plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches, by establishing and implementing a building set-back line that will accommodate a shoreline retreat. The local government shall hold a public educational meeting on the plan before proposing to implement it through the plans, orders, or ordinances provided by Chapters 61 and 63.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.604 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.608. REPORT TO LEGISLATURE. Each biennium, the commissioner shall submit to the legislature a report listing:

- (1) each critical erosion area;
- (2) each proposed erosion response study or project;
- (3) an estimate of the cost of each proposed study or project described by Subdivision (2);
- (4) each coastal erosion response study or project funded under this subchapter during the preceding biennium;
- (5) the economic and natural resource benefits from each coastal erosion response study or project described by Subdivision (4);
- (6) the financial status of the account; and
- (7) an estimate of the cost of implementing this subchapter during the succeeding biennium.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.609. LANDOWNER CONSENT. (a) The commissioner may not undertake a coastal erosion response project on:

- (1) permanent school fund land without first obtaining the written consent of the school land board; or
- (2) private property, other than that encumbered by the common law rights of the public affirmed by Chapter 61, without first obtaining the written consent of the property owner.

(b) If the commissioner cannot determine the identity of or locate a property owner, consent is considered to have been given if:

- (1) the commissioner publishes a notice of the project at least once a week for two consecutive weeks in the newspaper having the largest circulation in the county in which the project is located; and
- (2) the property owner does not object on or before the 20th day after the last date notice is published under Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.610. REMOVAL OF SUBMERGED LAND FROM APPRAISAL AND TAX ROLLS. (a) If the commissioner determines that land has become submerged by erosion or subsidence and as a result is dedicated to the permanent school fund, the commissioner may notify in writing the appraisal district that appraises the land for ad valorem tax purposes and each taxing unit that imposes taxes on the land. The notice must include a legal description of the land.

(b) On receipt of notice under Subsection (a):

- (1) the appraisal district shall remove the land from the appraisal roll; and
- (2) each taxing unit shall remove the land from its tax roll.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.611. IMMUNITY. (a) This state, the commissioner, and land office staff are immune from suit for damages and from liability for an act or omission related to:

- (1) the approval, disapproval, funding, or performance of a coastal erosion response activity, including an erosion response study or project or a survey; or
- (2) the failure of an erosion response project undertaken by the commissioner under this subchapter to fulfill its intended purpose.

(b) The immunity granted by this section does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or committed with conscious indifference or reckless disregard for the safety of others.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.612. JUDICIAL REVIEW. (a) Judicial review of rights affected by an action of this state, the commissioner, or land office staff under this subchapter is under the substantial evidence rule. In order to prevail, a person seeking review must prove that the action complained of was arbitrary, capricious, or otherwise not in accordance with law.

(b) Venue for an action relating to this subchapter is in Travis County.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.613. PROPERTY RIGHTS; RESTORATION BY BEACHFRONT OWNER OF PRIVATE PROPERTY AFFECTED BY COASTAL EROSION. (a) This section applies to land that:

(1) on December 31, 1955, was privately owned and not submerged or owned by the School Land Board; and

(2) fronts on a bay and not the Gulf of Mexico.

(b) In accordance with land office rules, the owner of property immediately landward of a public beach or submerged land, including state mineral lands, that has been affected by coastal erosion shall restore the affected land to its original boundaries as evidenced in a residential subdivision plat for residential lots of one acre or less filed in the real property records of each county in which the affected land is located. The owner shall use only private resources and money for restoration authorized by this section. After restoration the owner owns the restored land in fee simple, subject to:

(1) the common law rights of the public in public beaches as affirmed by Subchapter B, Chapter 61; and

(2) the rights of a public school land lessee holding a lease on the property on September 1, 2005.

(c) In accordance with land office rules, the owner shall build bulkheads on the restored land to prevent further erosion of the restored land.

(d) The land office shall adopt reasonable rules to govern the restoration of land under this section, including rules that:

(1) prescribe the type and quality of materials that may be used to backfill or build a bulkhead;

(2) require maintenance of backfill and bulkheads;

(3) authorize land office maintenance or removal of abandoned or dilapidated structures;

(4) require consideration of any adverse effects on adjacent property owners; and

(5) establish penalties for the violation of this section or rules adopted under this section.

(e) State money may not be used to restore land under this section.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 3, eff. June 17, 2005.

SUBCHAPTER I. COASTAL PROTECTION AND IMPROVEMENT

Sec. 33.651. DEFINITIONS. In this subchapter:

(1) "Bond" means any type of interest-bearing obligation, including a bond, note, bond anticipation note, certificate of participation, lease, contract, or other evidence of indebtedness issued by a coastal county to pay the project costs of a qualified project.

(2) "Coastal county" means a county that borders on the Gulf of Mexico.

(3) "Coastal erosion" has the meaning assigned by Section 33.601.

(4) "Coastal improvement project" means a project to improve access to a public beach by:

(A) acquiring fee title to property or a right of public access to a public beach;

(B) constructing or maintaining public roads, parking, or other facilities in aid of public access to or use of a public beach; or

(C) requiring a landowner, as prescribed by land office rules, to restore land affected by coastal erosion to its original boundaries.

(5) "Coastal protection project" means a project to address or mitigate coastal erosion.

(6) "Coastal protection and improvement fund" means the coastal protection and improvement fund created under Section 33.653.

(7) "County coastal protection and improvement fund" means a county coastal protection and improvement fund created by a coastal county under Section 33.655.

(8) "Project cost" means a cost or expense incurred in relation to a qualified project, including the cost of:

(A) designing, engineering, acquiring, constructing, maintaining, improving, extending, repairing, replacing, monitoring, removing, or administering a qualified project; or

(B) financing a qualified project, including the cost of issuing bonds and the payment of principal, interest, and redemption price.

(9) "Public beach" has the meaning assigned by Section 61.013.

(10) "Qualified agreement" means an agreement between the land office and a coastal county in accordance with Section 33.657.

(11) "Qualified payment" means a payment by the commissioner to a coastal county from the coastal protection and improvement fund, as provided by this subchapter, that has been approved in amount and qualification for payment by the land office and the applicable coastal county.

(12) "Qualified project" means a coastal protection or improvement project that qualifies for funding under Section 33.656.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.652. APPLICABILITY OF SUBCHAPTER TO CERTAIN MUNICIPALITIES. The provisions of this subchapter relating to coastal counties apply to a municipality if all or substantially all of the gulf beach within a coastal county is located within the boundaries of the municipality.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.653. CREATION OF COASTAL PROTECTION AND IMPROVEMENT FUND. (a) The coastal protection and improvement fund is created as a trust fund outside the state treasury to be held by the Texas Treasury Safekeeping Trust Company and administered by the commissioner as trustee on behalf of the coastal counties.

(b) The fund consists of:

(1) gifts and grants; and

(2) appropriations of money to the fund by the legislature.

(c) The commissioner shall allocate five percent of the amount deposited in the fund to the land office to be used only to pay the cost of administering any coastal protection and improvement efforts undertaken under this subchapter and to support a coastal monitoring program by The University of Texas Bureau of Economic Geology and the sea turtle and shore monitoring programs of Texas A&M University at Galveston.

(d) The commissioner shall allocate 95 percent of the amount deposited in the fund for use by the coastal counties as provided by this subchapter.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.654. USE OF COASTAL PROTECTION AND IMPROVEMENT FUND. (a) The coastal protection and improvement fund shall be used only to make a qualified payment to a coastal county sponsoring a qualified project under this subchapter.

(b) The commissioner may make a qualified payment from the fund to a coastal county only if and to the extent that the coastal county is sponsoring a project that qualifies for funding as certified by the coastal county and the land office.

(c) The amount and timing of a qualified payment shall be determined by agreement between the land office and the coastal county sponsoring the project. The amount of a qualified payment may not exceed the estimated project costs.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.655. COUNTY COASTAL PROTECTION AND IMPROVEMENT FUND. (a) Each coastal county shall create a county coastal protection and improvement fund.

(b) Each coastal county shall deposit any qualified payment that it receives into its county coastal protection and improvement fund and shall use the money in the fund only to pay the project costs of a qualified project as provided by this subchapter.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. To qualify for funding under this subchapter, a project must:

(1) be sponsored by a coastal county;

(2) be located within the sponsoring coastal county along or adjacent to the shore of the Gulf of Mexico, an inland bay,

or a connecting channel between the Gulf of Mexico and an inland bay;

(3) be accessible by public roads or a common carrier ferry;

(4) be identified and approved for funding by a coastal county and the land office; and

(5) require more than \$5 million to complete, as estimated by the land office.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.657. QUALIFIED AGREEMENT. (a) The land office and a coastal county may enter into one or more agreements relating to a qualified project and the payment of the associated project costs. An agreement is governed by this subchapter.

(b) An agreement may provide that the commissioner will pay to the coastal county an agreed amount from the coastal protection and improvement fund over a term of years to be used by the coastal county for a project that qualifies for funding under this subchapter.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.658. QUALIFIED PAYMENT. (a) The commissioner shall make qualified payments to a coastal county based on the land office's estimate of the expected project costs of any qualified projects undertaken by that county in the fiscal year in which the payment is made.

(b) To the extent that the aggregate of qualified payments by the commissioner to a coastal county in a fiscal year exceeds the project costs of qualified projects undertaken by the county during that year, the commissioner shall recover the amount of the overpayment by:

(1) requiring the county to remit the amount of the overpayment to the commissioner for deposit in the coastal protection and improvement fund; or

(2) taking a credit against qualified payments due that county the following year or years.

(c) If a coastal county that received an overpayment is not due additional qualified payments the following year, the county shall promptly remit the amount of the overpayment to the commissioner for deposit in the coastal protection and improvement fund.

(d) Notwithstanding Subsection (b), the commissioner may not take a credit against qualified payments due a coastal county the following year if the county needs the full amount of the qualified payment that year to:

(1) pay the principal or interest on, or the redemption price of, bonds issued to finance a qualified project; or

(2) fund a reserve or other fund required by the documents authorizing the issuance of bonds.

(e) The failure of a coastal county to use the full amount of a qualified payment in the fiscal year in which it is received does not prejudice the right of the county to receive money from the coastal protection and improvement fund in future years as may be provided in the county's qualified agreement.

(f) A coastal county may not use a qualified payment as a local match for funding under a state program.

(g) A coastal county may use a qualified payment as a local match for funding under a federal program.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.659. GENERAL POWERS OF COASTAL COUNTIES. (a) In addition to all other powers that a coastal county has under general law, a coastal county has the rights, powers, privileges, authority, and functions that are necessary or convenient to:

(1) the designing, engineering, acquiring, constructing, improving, maintaining, extending, repairing, replacing, monitoring, removing, administering, and financing of a qualified project located in a coastal county; and

(2) the funding of a reserve or other fund relating to bonds.

(b) A coastal county may issue bonds to pay the project costs of a qualified project. For purposes of this subchapter, a coastal county is an issuer and a qualified project is an eligible project within the meaning of Chapter 1371, Government Code, and the provisions of Chapter 1371, Government Code, are applicable to bonds issued by a coastal county.

(c) A coastal county may:

(1) enter into agreements with a public or private person for the joint ownership, financing, or operation of a qualified project;

(2) enter into contracts, leases, and agreements with, and accept grants and loans from, any person to perform all acts necessary for the full exercise of the powers vested in the county on terms and for the term the county determines to be advisable;

(3) acquire property under a conditional sales contract, lease, equipment trust certificate, or other form of contract or trust agreement; and

(4) do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this subchapter.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.660. AUTHORITY TO CONTRACT. (a) A coastal county may contract with a state agency, municipality, county, or other political subdivision of the state or any agency or instrumentality of the federal government to implement a qualified project under this subchapter. A contract under this section may:

(1) be for a period on which the parties agree;

(2) include terms on which the parties agree; and

(3) be payable from taxes, qualified payments, or any other source of revenue available for that purpose.

(b) A coastal county may enter into a contract, lease, or agreement with or make or accept grants and loans to or from:

(1) the United States;

(2) the State of Texas;

(3) a county, municipality, or other political subdivision of the state;

(4) a public or private corporation; or

(5) any other person.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.661. FUNDS AVAILABLE FOR QUALIFIED PROJECTS. (a) A coastal county may pay the project costs of a qualified project from general or available funds, payments received from the land office, including payments from the coastal protection and improvement fund, contract reserves, ad valorem taxes, sales taxes, the proceeds of bonds, or any combination of those funds.

(b) Payments made by the commissioner under this subchapter are in addition to any other funds to which the coastal county may be entitled under any other state law or program.

(c) This subchapter does not preclude a contribution to a qualified project from any state, federal, private, or other source.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.662. BONDS ELIGIBLE FOR PURCHASE. Bonds issued by a coastal county under this subchapter may be purchased by the Texas Water Development Board for purposes authorized by Chapter 17, Water Code.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.

Sec. 33.663. CONSTRUCTION OF SUBCHAPTER. This subchapter shall be liberally construed to accomplish the purposes of mitigation of coastal erosion and improvement of public access to public beaches.

Added by Acts 2005, 79th Leg., ch. 867, Sec. 4, eff. June 17, 2005.